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GOVERNMENT OF GOA

EXTRAORDINARY

GOVERNMENT OF GOA

Department of Urban Development

Notification

3-13/2/86-PW&UD

The following draft of certain rules which the Government of Goa proposes to make in exercise of the powers conferred by sub-section (2) of section 306 read with section 184B and section 184C of the Goa, Daman and Diu Municipalities Act, 1968 (Act No. 7 of 1969), is hereby pre-published as required by sub-section (3) of the section 306 of the said Act for information of the persons likely to be affected thereby and notice is hereby given that the said draft rules will be taken into consideration by the Government on the expiry of fifteen days from the date of publication of this Notification in the Official Gazette.

All objections and suggestions to the draft rules may be sent to the Under Secretary to the Government of Goa, Department of Urban Development, Secretariat, Panaji, before the expiry of fifteen days from the date of publication of this Notification in the Official Gazette so that they may be taken into consideration at the time of finalisation of the same.

DRAFT RULES

In exercise of the powers conferred by sub-section (2) of section 306 read with sections 184B and 184C of the Goa, Daman and Diu Municipalities Act, 1968 (Act No. 7 of 1969) and all other powers enabling it in that behalf, the Government of Goa hereby makes the following rules, namely:—

1. *Short title and commencement.*—(1) These rules may be called the Goa Municipalities Appellate Tribunal Rules, 1988.

(2) They shall come into force at once.

2. *Definitions.*—In these rules unless the context otherwise requires,—

(a) 'Act' means the Goa, Daman and Diu Municipalities Act, 1968 (Act No. 7 of 1969);

(b) "Appellate Tribunal" means the Appellate Tribunal constituted under section 184B of the Act;

(c) "Chief Officer" means the person appointed or deemed to be appointed under the Act to be the Chief Officer of a Municipal area;

(d) "Council" means a Municipal Council constituted or deemed to be constituted under the Act for a Municipal area;

(e) "Local authority" means a municipality or Village Panchayat, as the case may be constituted under any law for the time being in force in the State of Goa;

(f) "Official Gazette" means the Goa Government Gazette;

(g) "Notification" means a notification published in the Official Gazette;

(h) "State Government" means the Government of Goa;

(i) "words and expressions used but not defined in these rules shall have the same meaning respectively as assigned to them in the Act".

3. *Constitution of Appellate Tribunal.*—(1) An Appellate Tribunal shall consist of one person who shall be qualified to be appointed as the presiding officer of the Appellate Tribunal.

(2) The presiding officer of the Tribunal shall hold office ordinarily for a period of not more than five years and in any case not beyond his attaining the age of 65 years.

(3) A person who has held office of the Appellate Tribunal for a period specified under sub-rule (2) above, shall not be disqualified for being appointed as the presiding officer of the Tribunal for subsequent terms provided that a presiding officer may at any time by writing under his hand addressed to the Government resign his office.

4. *Fees as honorarium of the presiding officer.*—The presiding officer of the Appellate Tribunal shall be entitled to fee as honoraria at the following rates:—

(1) In the case of serving officer of Government Rs. 500/- per month.

(2) In any other case, a sum of Rs. 3000/- per month.

5. The presiding officer of the Tribunal may with the previous permission of the State Government, hold any other office under the Government or local authority or under any statute or employment which shall not be inconsistent with his office.

6. *Sitting of the Appellate Tribunal.* — The Appellate Tribunal shall ordinarily sit at Panaji, but may sit at any other place convenient for the transaction of the business with the approval of the State Government, which may by general or special order, notify in the Official Gazette.

7. *To whom appeal shall lie.* — An appeal against an order of the Chief Officer made under sub-section (8) of section 184 of the Act shall lie to the Appellate Tribunal Constituted under section 184 B of the Act.

8. *Form and contents of appeal and application.* — (1) Every appeal against the order of the Chief Officer made under sub-section (8) of section 184 of the Act, shall be made in the form of a Memorandum.

(2) the memorandum of appeal shall be presented in duplicate to the Appellate Tribunal by the appellant, or his agent, or it may be sent to the Appellate Tribunal by registered post, and shall be signed either by the appellant himself or by a person duly authorised by him in writing in this behalf.

(3) The memorandum of appeal shall,—

- (a) be in writing;
- (b) specify the name and address of the appellant;
- (c) specify the date of the order against which it is made;
- (d) contain clear statement of facts;
- (e) contain specific grounds of Appeal;
- (f) State precisely and in brief the relief prayer for; and

(g) be signed and verified by the appellant or by an agent duly authorised by him in writing in that behalf, in the following form, namely:

"I, _____, appellant/agent appointed by the appellant named in the above memorandum of appeal do hereby declare that what is stated herein is true to the best of my knowledge and belief".

(4) A fee of rupees fifty shall be payable in respect of memorandum of appeal and the same shall be paid in Court fee stamp affixed to the memorandum, the memorandum of appeal shall be accompanied by either the order in original against which it is made or duly authenticated copy thereof, unless the omission to produce such order or copy is explained at the time of the presentation of the appeal to the satisfaction of the Appellate Tribunal. In respect of other applications for which

no fee is provided for, it shall be the same as being charged before Administrative Tribunal.

(5) It shall be open to Respondent in the appeal to file a reply and if such reply is filed, the Appellant may file a rejoinder.

9. *Summary rejection.* — The appeal may be summarily rejected if the appellant, after being given the opportunity in this behalf, fails to comply with any of the requirements of sub-rule (3) and sub-rule (4) of rule 8 of the Rules.

10. *Hearing.* — If the Appellate Tribunal does not reject the appeal summarily, it shall fix a date and time for hearing and shall notify the same to the appellant and to the Municipal council or its officer or servant.

(2) If the Appellate Tribunal so desires, it may depute any assessor to inspect and submit a report after making such inquiries as directed, but no recommendation of the assessor shall be binding on the Appellate Tribunal.

(3) The Appellate Tribunal may for sufficient reasons adjourn at any stage of hearing of an appeal to a different date.

(4) If on the date and at the time fixed for hearing or at on any other date or at any other time to which the hearing may be adjourned, the appellant or his agent does not appear before the appellate Tribunal either in person or through an agent, the Appellate Tribunal may dismiss the appeal or may decide it ex-parte as it may think fit:

Provided that, if within fifteen days from the date on which the appeal was dismissed or decided ex-parte under this sub-rule, the appellant makes an application to the Appellate Tribunal for setting aside the order and satisfies it that the intimation of the date of hearing was not duly served on him or that he was prevented by sufficient cause from appearing when the appeal was fixed for hearing, the said Appellate Tribunal shall make an order setting aside the dismissal or ex-parte decision upon such terms as it thinks fit, and shall appoint a day for proceeding with the appeal.

11. *Appellate Tribunal to have the power of civil Court.* — (1) An Appellate Tribunal shall in exercising its appellate jurisdiction in any application, petition, appeal filed before it, shall have all the powers which are vested in a Civil Code under the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(2) The Appellate Tribunal shall be deemed to be a Civil Court for all purposes and the proceedings before it shall be deemed to be judicial proceeding within the meaning of section 193, and 196 and for the purpose of section 228 of the Indian Penal Code (Central Act 45 of 1860), and every Appellate Tribunal shall be deemed to be a Civil Court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(3) In any proceeding which is pending before it, the Appellate Tribunal may, if it thinks necessary, direct that such further investigation be made or such additional evidence be taken or may itself take

such additional evidence, or may remand the case for disposal with such direction as it deems fit.

12. *Government to be heard in certain cases.* — If at any stage of any proceeding before the Appellate Tribunal, it appears to the Appellate Tribunal that the proceeding raise a question as to the interpretation of any Law which is of such nature and of such public importance that it is expedient to issue notice to the State Government, the Appellate Tribunal shall issue notice to the State Government and the Government may if it thinks fit, appear before the Appellate Tribunal which shall then hear the State Government before deciding the question.

13. *Execution of order.* — (1) All final orders of the Appellate Tribunal shall be executed as far as may be in the same manner as a decree of a Civil Court.

(2) No officer or other person bound to execute the lawful orders of the Tribunal shall be liable to be sued or proceeded against any Court, in respect of the execution of such order.

14. *Costs.* — Without prejudice to the generality of the provisions of the Act the awarding costs, the Appellate Tribunal may take into account—

- a) expenditure incurred for filing of appeal and for contesting the same;
- b) expenditure incurred by a party for production of witnesses even though not summoned through the Appellate Tribunal;
- c) Charges incurred by a party for obtaining any copies of order which are required to be filed with the memorandum of appeal and;
- d) The fees paid by the party for engaging a lawyer, and such other incidental expenditure incurred in the matter.

15. *Damages.* — Subject to the provisions contained in the Act the Appellate Tribunal, shall in its discretion determine as to whom and to what extent the damages in respect of—

- (i) loss incurred as a result of order made by the Chief Officer under sub-section (8) of section 184 of the Act;

(ii) inconvenience caused to and expenses incurred by the aggrieved party and also grant such other relief as the Appellate Tribunal may think fit.

16. *Copies of documents and orders.* — (1) Any person who is a party to a proceeding under the Act or under the rules may apply to the Appellate Tribunal having jurisdiction in respect of such proceeding or having the custody of the records pertaining thereto, for a certified copy of a document produced or filed in such proceeding or of an order passed by such Appellate Tribunal.

(2) An application made under sub-rule (1) shall be accompanied by a fee of one rupee in Court fee stamp and a deposit of an amount to cover the cost of preparing certified copies according to the scale of copying fees as specified below. The amount so calculated according the said scale of fee shall be deposited with the authority as copying fee and the amount, if any, by which the amount deposited exceeds the amount of copying fees so deposited shall be refunded to the applicant at the time of delivering the copy.

Provided that the applicant shall if the amount deposited by him is not found to be sufficient to cover the amount of copying fees, pay the deficit before taking delivery of the copy.

(i) For obtaining a certified copy of document for first 200 words or less ... Rs. 3.00.

(ii) for every additional 100 words ... Rs. 2.00.

Transitional. — Notwithstanding anything contained in these rules, any proceedings pending immediately before the commencement of the rules before the Appellate Tribunal constituted under the Act shall be dealt with and disposed of by the Appellate Tribunal under these rules as if the same were filed before it.

By order and in the name of the Governor of Goa.

D. V. Sathe, Under Secretary to the Government of Goa, U. D.

Panaji, 12th December, 1988.